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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: PORTLAND, OREGON Date: JUL 02 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:
[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Portland, Oregon. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i), for having been unlawfully present in the United States. The record reflects that the applicant was admitted into the United States (U.S.) as a nonimmigrant visitor on September 19, 1995, and that he was authorized to stay in the U.S. until August 1996. The applicant departed the United States on June 25, 1996. He was subsequently readmitted into the U.S. as a non-immigrant visitor on April 4, 1997, and authorized to stay in the U.S. until October 3, 1997. The record reflects that the applicant departed the U.S. in December 1998, one year and two months after his authorized stay expired. The applicant returned to the U.S. on January 15, 1999. The record reflects that the applicant married a U.S. citizen in Lebanon, Oregon in 1998, and that he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to reside with his wife and children in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *See District Director Decision,* dated October 29, 2002.

On appeal, the applicant, through counsel, asserts that he departed the United States in July 1998, and that he therefore was not unlawfully present in the U.S. for one year or more as set forth in section 212(a)(9)(B)(i) of the Act. Counsel also asserts that the applicant's U.S. citizen wife (Mrs. [redacted] will suffer financial and emotional hardship if the applicant is not granted a waiver of inadmissibility. In support of the above assertions, counsel submitted sworn affidavits from the applicant and Mrs. [redacted] Counsel additionally submitted copies of an August 1998 phone bill, delinquent bill statements and information pertaining to the minimum wage in Mexico.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -
>
> (II) Has been unlawfully present in the

> United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .
>
> (v) Waiver. - The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant states in a sworn affidavit, that he left the U.S. in July, 1998. Specifically the applicant states that he and his wife resided in San Diego, California from July 1998 until August 1998, and that one day they went to Tijuana, Baja California, Mexico for shopping and eating. The applicant attached a copy of his and his wife's August 1998 phone bill in San Diego to support the assertion that they lived in San Diego.

The applicant's affidavit is vague and lacks material detail regarding, amongst other things, the precise date of the applicant's departure or the date and process of his re-entry into the United States. Furthermore, the affidavit is unsupported by corroborating evidence. It is noted that the phone bill submitted by the applicant contains only his wife's name. Moreover, although the applicant claims that he was in San Diego in July 1998, the phone bill states specifically that phone service was established on August 4, 1998, and that it was disconnected on August 16, 1998. It is also noted that the phone bill address listed for Mrs. [redacted] is an address in Lebanon, Oregon. The reliability of the applicant's affidavit is additionally put into question by the fact that neither the applicant, nor his wife, nor their attorney mentioned the alleged July 1998 departure during the adjustment of status interview, in the original I-601 application, or on the initial notice of appeal filed on behalf of the applicant. This office thus concludes that the applicant's affidavit has no evidentiary value and that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999),

the Board of Immigration Appeals (BIA) provided a list of factors it deemed to be relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

In this case, counsel asserts that Mrs. [redacted] will suffer extreme hardship because a separation would cause her emotional and financial hardship. There are no health issues in this case. Moreover, Mrs. [redacted] assertion that she might not be able to realize her dream of becoming a teacher does not demonstrate hardship, as she voluntarily stopped attending school when her children were born. In their affidavits, the applicant and his wife state that family separation and economic hardship are the main hardships they will suffer. No evidence exists in the file, however, to indicate that Mrs. [redacted] would suffer emotional hardship beyond that normally resulting from deportation.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. Moreover, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit of Appeals defined "extreme hardship" as hardship that is unusual or beyond that which would normally be expected upon deportation. The court then reemphasized that the common results of deportation are insufficient to prove extreme hardship.

Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. Thus the assertion that Mrs. [redacted] would suffer financial hardship because the economy in Mexico is poorer than that of the U.S. or because she could lose her husband's current source of income, does not constitute extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme

hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.